

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

01 OCT 9 PM 2 30

In Re: Complaint of XO Tennessee, Inc.)
Against BellSouth Telecommunications,)
Inc.)

EXECUTIVE SECRETARY
Docket No. 01-00868

COMPLAINT OF XO TENNESSEE, INC.

This complaint is filed by XO Tennessee, Inc. ("XO") against BellSouth Telecommunications, Inc. ("BellSouth") pursuant to Rule 1220-4-8-.09(b).¹

1. XO is a competitive local exchange carrier certified by the Tennessee Regulatory Authority ("TRA") to offer intrastate telecommunications services in Tennessee.

2. BellSouth is an incumbent, local exchange telephone company offering telecommunications services in Tennessee. BellSouth is subject to price cap regulation. See footnote 3, *infra*.

3. On or about September 5, 2001, a BellSouth Senior Account Executive offered to provide telephone service to a Tennessee customer pursuant to the "BellSouth Key Business Discount Program" (the "Program"). The offer included the following statement:

Additionally, for coming back to BellSouth, you get 3 months free service -- over \$1000 value. We would love to have you back. I

¹ The rule states:

Upon the complaint of any interested party that any telecommunications service provider has violated any of the anti-competitive or discriminatory rate prohibitions found in applicable rules or statutes, the Commission shall investigate the complaint and may convene a contested case proceeding if such complaint is found to have merit. However, the complaining party must allege with specificity the action by the telecommunications service provider that appears to be in violation of said prohibitions or the complaint is subject to dismissal by the Commission.

can meet with you while in Memphis next week if you have any free time.

Attached to this complaint is a copy of the documents containing that offer.²

5. Based on a review of BellSouth's tariffs and promotional offers on file at the TRA, there is no BellSouth tariff or promotional offering which allows BellSouth to offer three months of free service as part of the Key Business Discount Program.

6. Based upon these allegations and the attached, corroborating documents, BellSouth appears to have violated T.C.A. § 65-4-122, which prohibits discriminatory pricing, and TRA Rule 1220-4-8-.09(2)(c)(3).³ This marketing practice also indicates that BellSouth may be engaged in a pattern of illegal and anti-competitive conduct.⁴

7. In response to a similar complaint filed by Access Integrated Networks, Inc., ("AIN") Docket No 01-00808, BellSouth has admitted making a similar offer to a Knoxville customer on August 27, 2001. The Answer filed by BellSouth assures the Authority that, "Any statement or implication that a customer will receive free or complimentary tariffed services under the BellSouth 2001 Key Discount Program is contrary to both the terms of the applicable

² The name of the customer has been deleted from the documents to protect the customer's privacy. The documents contain sufficient information, however, for BellSouth to identify the account in order to respond to this complaint.

³ The rule states :

(c) All incumbent local exchange telephone companies subject to price cap regulation shall be required to . . .

3. Adhere to all other anti-competitive provisions found in this Rule Chapter pertaining to the provision of nondiscriminatory interconnection with other providers under reasonable terms and conditions, the compliance with price floor and cost imputation restrictions on the pricing of competitive services, and compliance with applicable tariff and special contract provisions.

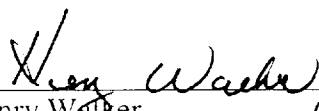
⁴ See also, *Complaint of Access Integrated Networks, Inc. Against BellSouth*, Docket No. 01-00808, in which BellSouth has admitted that a similar offer was recently made to a customer in Knoxville, Tennessee.

tariff and BellSouth policy and practice.” Answer, paragraph 7. The accuracy of that representation is, to say the least, substantially in doubt. Based upon this complaint and the contemporaneous, illegal offer described in the AIN complaint, there is apparently a BellSouth-sanctioned marketing plan now in effect in Tennessee under which some customers, presumably those now being served by CLECs, are being offered three months free service in exchange for signing a Key Customer contract.

8. XO therefore asks that the Authority issue a show cause order, pursuant to T.C.A. 65-2-106, requiring BellSouth to appear and show cause why the Authority should not sanction BellSouth for violation of T.C.A. 65-4-122 and the TRA’s rules and take such other action as the Authority finds necessary and appropriate.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
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Nashville, Tennessee 37219
(615) 252-2363

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From: "Porter" Block Address | Add to Address Book

To: "lmurray9405@yahoo.com" <lmurray9405@yahoo.com>

Subject: BellSouth Service

Date: Wed, 5 Sep 2001 16:28:02 -0400

Linda,

I left a message for the customer care manager to rush the business line order and I will call you tomorrow.

I priced out 7 lines, 6 hunting, and caller ID. The total is \$378/mo. The standard price is \$585. The Key Customer discount accounts for the approximately \$207 difference. Key Customer is a customer loyalty program. You sign an agreement to stay with BellSouth for 36 months, and you get the roughly 35% discount.

Additionally, for coming back to BellSouth, you get 3 months free service- over a \$1000 value. We would love to have you back. I can meet with you while in Memphis next week if you have any free time.

Thank you,

Robin

Robin Porter
BellSouth Business
Sr. Account Executive
800.231.3585 phone
615.401.4070 fax

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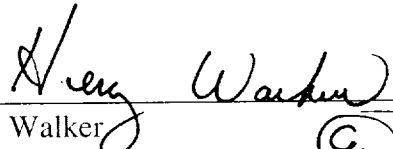
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 9th day of October, 2001.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300


Henry Walker 